

SERVED: June 30, 1998

NTSB Order No. EA-4677

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of June, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14995
v.)	
)	
SCOTT DUNNING MEAD,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because the appeal was not perfected by the filing of a timely appeal brief, as required by Section 821.48(a) of the Board's Rules of Practice (49 CFR Part 821).¹ We will grant the motion, to which respondent filed an answer in opposition.

¹Section 821.48(a) provides as follows:

§ 821.48(a) **Briefs and oral argument.**

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

The record establishes that respondent, by counsel, filed a timely notice of appeal from the law judge's denial of a request for reconsideration of his oral initial decision and order, but he did not file an appeal brief within 30 days after the denial; that is, by April 6, 1998.²

In reply to the Administrator's motion, respondent points out that the Board has discretion under Section 821.48(a) to accept a late-filed appeal brief. However, while the rule itself does not require dismissal of every appeal that is not perfected on time, the Board, in Administrator v. Hooper, 6 NTSB 559 (1988), unequivocally expressed its intent to accept thereafter only those late appeal briefs whose tardiness was excusable for good cause shown. Since respondent has offered no reason for missing the applicable deadline, dismissal of his appeal is required by Hooper and the numerous cases that, without exception, have subsequently applied it.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

²The law judge upheld an order of the Administrator suspending respondent's commercial pilot certificate (No. 218687500) for his alleged violations of sections 91.175(c)(1) and 91.13(a) of the Federal Aviation Regulations, 14 CFR Part 91. The law judge modified the order to provide for a 30, rather than a 60, day suspension.